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**APR 12 2006**  
**OFFICE OF PETITIONS**

|                               |   |                         |
|-------------------------------|---|-------------------------|
| In re Application of          | : |                         |
| Gregory A. Lazar, et al.      | : |                         |
| Application No. 10/822,231    | : | DECISION ON PETITION    |
| Filed: March 26, 2004         | : | UNDER 37 CFR 1.78(a)(6) |
| Attorney Docket No. A-71386-8 | : |                         |

This is a decision in response to a renewed petition, filed December 13, 2005, under 37 CFR 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of the prior-filed provisional applications set forth in the concurrently filed amendment.

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

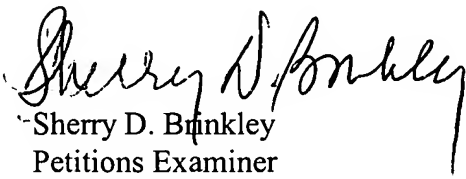
- (1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.


The petition satisfies the conditions of 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. § 119(e). It is noted that the requisite surcharge was paid with the original petition on November 12, 2004. Therefore, the fee submitted with the present petition is unnecessary and is being credited to counsel's deposit account.

*The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(6) should not be construed as meaning that the application is entitled to the benefit of the filing date of the prior-filed applications. In order for the application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that a corrected Filing Receipt includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.*

Any inquiries concerning this decision may be directed to Sherry D. Brinkley at (571) 272-3204.

The application is being forwarded to Technology Center AU 1644 for appropriate action on the amendment submitted December 13, 2005, including consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to the prior-filed provisional applications.

  
Sherry D. Brinkley  
Petitions Examiner  
Office of Petitions

  
Frances M. Hicks  
Petitions Examiner  
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